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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA GONZÁLEZ, FREDDY JOSE ARAPE RIVAS, M.H., CECILIA DANIELA GONZÁLEZ HERRERA, ALBA CECILIA PURICA HERNÁNDEZ, E.R., HENDRINA VIVAS CASTILLO, A.C.A., SHERIKA BLANC, VILES DORSAINVIL, and G.S..

Plaintiffs,

VS.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, and UNITED STATES OF AMERICA

Defendants.

Case No. 3:25-cv-01766-EMC

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
(ECF. 262)**

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INTRODUCTION

After Plaintiffs supplemented their First Amended Complaint to add allegations related to the termination of TPS for Haiti—which arose after Plaintiffs filed the Amended Complaint and Defendants filed their Motion to Dismiss—Defendants filed a new Motion to Dismiss the First Amended and Supplemental Complaint (“FASC”), apparently on the mistaken belief that their original Motion to Dismiss became moot when Plaintiffs supplemented their Amended Complaint. Dkt. 262. A supplemental complaint “is not a substitute for, and does not supersede, the original complaint, but assumes that the original complaint is to stand, and both together constitute the complaint in the action.” 71 C.J.S. Pleading § 479; *Sweet v. Cardona*, 121 F.4th 32, 47 (9th Cir. 2024) (“[U]nder Rule 15(d), Plaintiffs’ supplemental complaint merged with their then-operative complaint.”). As the Court correctly recognized in relieving Plaintiffs from any obligation to repeat arguments from the prior opposition, Dkt. 263, Plaintiffs’ prior opposition to the Motion to Dismiss remains operative. In keeping with the Court’s instructions and the settled understanding of the purpose and effect of a supplemental pleading, Plaintiffs hereby incorporate all their prior arguments in opposition to the Motions to Dismiss; Plaintiffs intend for all of their arguments to apply to each of Defendants’ Motions to Dismiss. See Dkt. 158 (responding to Dkt. 122).¹

Defendants' renewed Motion does not substantively change or add any new arguments related to any of the agency actions at issue in this case other than the 2025 Haiti TPS Termination, and even as to that action, most of their arguments simply repeat arguments identical to those they made with respect to the Venezuela termination. Defendants provided no redline comparing the original motion to their new one, but based on Plaintiffs' review, the new Motion to Dismiss differs from the prior one only in that it adds a procedural background section; drops claims of unripeness vis-à-vis Haitian TPS holders (presumably because the agency has now terminated TPS for Haiti);

¹ Defendants never directly assert that the summary judgment motion or any other unresolved motions are moot due to the supplemental complaint, which also would be wrong. Among other things, the Court always has discretion to deem already pending motions and related briefing as responsive to the now-operative supplemental complaint. *United States v. Albert C. Kobayashi, Inc.*, No. CV 19-00531 LEK-RT, 2023 WL 2163678, at *1 n.3 (D. Haw. Feb. 22, 2023); *see also Avina v. Bohlen*, 882 F.3d 674, 676 (7th Cir. 2018); *TERA II, LLC v. Rice Drilling D, LLC*, 679 F. Supp. 3d 620, 636 (S.D. Ohio 2023), *on reconsideration in part*, No. 2:19-CV-2221, 2024 WL 231456 (S.D. Ohio Jan. 22, 2024), *and opinion clarified*, No. 2:19-CV-02221, 2024 WL 248889 (S.D. Ohio Jan. 22, 2024).

1 adds a new factual description for the Secretary's termination of TPS for Haiti; and slightly
 2 reorganizes its argument structure without adding any substantively new arguments. The only new
 3 cases cited are cumulative and do not introduce new arguments. In light of the Court's instruction,
 4 Plaintiffs address *only* Defendants' new arguments, which relate to a handful of the supplemental
 5 allegations. For the reasons below, this Court should deny Defendant's renewed Motion to Dismiss
 6 as to those allegations (just as it should as to the pre-existing allegations in Plaintiffs' First Amended
 7 Complaint).²

8 ARGUMENT

9 With respect to Plaintiffs' new claims arising from the 2025 Haiti termination decision,
 10 Defendants' new Motion to Dismiss primarily just applies the same arguments to the Haiti
 11 termination that Defendants advanced in their motion to dismiss as to the Venezuela TPS
 12 termination. Plaintiffs' incorporation by reference of all the arguments in their original response to
 13 Defendants' original Motion to Dismiss suffices to establish that they have sufficiently pled
 14 violations of the APA and the Constitution as to the Haiti termination as well. Therefore, the Court
 15 should deny Defendants' new Motion to Dismiss. Nonetheless, Defendants make several further
 16 points regarding the Haiti termination that warrant brief discussion.

17 A. Plaintiffs Adequately Allege that the Haiti Termination Decision Violates the 18 APA

19 Plaintiffs adequately allege that the Haiti termination violates the APA because, *inter alia*,
 20 (1) it was based on the unlawful partial vacatur of Haiti's previous TPS extension; (2) it relied on the
 21 Secretary's finding that permitting Haitian TPS holders to remain in the U.S. would be contrary to
 22 the national interest, which is not a permissible basis for termination; and (3) it was not based on a
 23 review of country conditions, as required by the TPS statute, but instead a predetermined decision to
 24 terminate. FASC ¶¶ 221–224.

25 As to (1) and (2), Defendants' Motion should be denied for the reasons described in

26
 27 ² As always, the Court should evaluate Defendants' Motion to Dismiss on the assumption that
 28 Plaintiffs' allegations are true, as are any reasonable inferences that could be drawn therefrom. That
 assumption is particularly appropriate here, as Defendants still have not produced the Certified
 Administrative Record for the Haiti termination decision, despite Plaintiffs having requested it.

1 Plaintiffs' Opposition to Defendants' first Motion to Dismiss, which apply equally to the Haiti
 2 termination. Dkt. 158 at 13–15.

3 As to (3), Defendants argue that the Secretary's decision was "based on a joint assessment"
 4 of the national interest and that the Secretary's termination Notice "appropriately considered country
 5 conditions, evaluated the national interest, and provided her reasons for terminating." Dkt. 262 at
 6 21–22 (arguing that "[t]he Secretary's reasoned determinations were unquestionably a lawful
 7 exercise of her authority to determine whether 'permitting aliens to remain temporarily in the United
 8 States is contrary to the national interest of the United States.'") (*citing* 8 U.S.C. § 1254a(b)(1)(C);
 9 *Poursina v. USCIS*, 936 F.3d 868, 874 (9th Cir. 2019)). But this argument ignores that Defendants
 10 provided two fundamentally inconsistent reasons for their decision to terminate TPS for Haiti.

11 The June 7, 2025 DHS Press Release announcing the decision to terminate Haiti's TPS
 12 designation asserted that the Secretary determined that country conditions had *improved* to the point
 13 where Haitians could safely return home. FSAC ¶ 106. But the July 1, 2025 Federal Register Notice
 14 contained no such determination regarding country conditions. *Id.* ¶ 107. Instead, the Notice cited
 15 the "national interest" clause of 8 U.S.C. § 1254a(b)(1)(C) as the exclusive basis for termination.
 16 The Secretary only analyzed country conditions in the context of the agency's "national interest"
 17 findings. *Id.* Ironically, there the Secretary acknowledged the catastrophic conditions—"a
 18 devastating political, environmental, social, and economic situation . . . in Haiti"; "Gang violence in
 19 Haiti persists as armed groups operate with impunity, enabled by a weak or effectively absent central
 20 government"; and "Haiti is in the grip of severe humanitarian and human rights crisis." *Id.* (quoting
 21 90 Fed. Reg. 28760, 28762–63 (July 1, 2025)). While acknowledging that "[t]he current situation in
 22 Haiti is concerning," Secretary Noem nonetheless determined that termination was warranted
 23 because "the United States must prioritize its national interests." *Id.* (quoting 90 Fed. Reg. at 28763).

24 Defendants' simultaneous promulgation of two directly contradictory explanations for the
 25 Haiti termination suffices to demonstrate, at least for purposes of a motion to dismiss, that the
 26 reasons given were pretextual. As Plaintiffs allege, the truth is that Defendants decided to terminate
 27 TPS for Haiti well before conducting *any* review. *Id.* ¶¶ 121–23. Such a preordained decision
 28 violates the APA's requirement that agencies provide "genuine justifications for important

1 decisions,” *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019), and the TPS statute’s requirement
 2 that TPS decisions be based on a review of country conditions. 8 U.S.C. § 1254a(b)(3)(A). Plaintiffs
 3 have therefore stated a claim and Defendants’ Motion to Dismiss fails for this additional reason.

4 **B. Plaintiffs Adequately Allege that the Haiti Termination Decision was
 5 Unconstitutionally Motivated by Animus (Fourth Claim)**

6 In their FASC, Plaintiffs adequately alleged that the 2025 Haiti termination decision was
 7 unconstitutionally motivated by animus. The arguments regarding the discrimination claims that
 8 Plaintiffs have incorporated by reference pursuant to the Court’s Order, Dkt. 263, suffice to establish
 9 that Defendants’ Motion to Dismiss this claim fails. *See* Dkt. 158.

10 While those arguments suffice to establish that the Secretary’s TPS decisions as to Haiti (like
 11 the decisions as to Venezuela) are motivated by racism, Defendants’ new Motion to Dismiss offers
 12 further support for that claim. Defendants assert the Secretary considered a recent U.S. State
 13 Department of State action designating two organizations in Haiti as Foreign Terrorist Organizations
 14 when considering U.S. public safety, which was one of the factors on which the Secretary relied to
 15 conclude that terminating TPS for Haiti was not in the national interest. Defendants assert the
 16 Secretary “noted that members of these organizations … in some instances” engage in harmful
 17 conduct, Dkt. 262 at 9, but the termination Notice for Haiti identifies a grand total of *one*
 18 individual—not identified to be a TPS holder—as evidence of harm to public safety. The person they
 19 name in the Notice, Wisteguens Jean Quely Charles, is not described as a TPS holder. FASC ¶ 110.

20 The Federal Register Notice justifies termination of TPS for all Haitians based on the
 21 allegedly dangerous actions of this *one individual*. The Notice states “[t]his case underscores the
 22 broader risk posed by rising Haitian migration, particularly in light of multiple large-scale prison
 23 breaks in Haiti and the increasing numbers of encounters reported by U.S. Customs and Border
 24 Protection.” 90 Fed. Reg. at 28763. Even assuming the allegations against Mr. Charles to be
 25 accurate, the Notice provides no evidence that there are *any* TPS holders convicted of crimes or
 26 alleged to have gang involvement, let alone enough of them to justify attributing any heightened risk
 27 to the group as a whole. DHS’s reliance on one individual case of a Haitian in the United States—
 28 perhaps without TPS—to justify stripping TPS status for several hundred thousand people is, as this

1 Court previously described it, the “classic example of racism.” Dkt. 93 at 66.

2 Finally, the Secretary’s national interest justifications relied heavily on President Trump’s
 3 Executive Orders “Protecting the American People Against Invasion” and “America First Policy
 4 Directive to the Secretary of State,” as well as his Presidential Proclamations “Guaranteeing the
 5 States Protection Against Invasion” and “Restricting the Entry of Foreign Nationals to Protect the
 6 United States from Foreign Terrorists and Other National Security and Public Safety Threats.” 90
 7 Fed. Reg. at 28762–63. These Executive Orders and Proclamations characterized lawfully admitted
 8 Haitian immigrants as “illegal” and their admission into and presence in the United States as a
 9 “flood” and “invasion,” thus invoking the racist trope that non-white immigrants are “invading” the
 10 U.S. with the goal of replacing white American culture. *See generally* Dkt. 158 at 21–24. There is no
 11 need to rely on “cat’s paw” theory in light of the Federal Register Notice having explicitly adopted
 12 President Trump’s racist statements within the four corners of the official agency Notice.

13 For these reasons as well, Plaintiffs have pled more than enough evidence of racial animus to
 14 survive a motion to dismiss.

15 CONCLUSION

16 For the foregoing reasons, and for the reasons given in Plaintiffs’ opposition to Defendants’
 17 original Motion to Dismiss, Plaintiffs’ respectfully request that the Court deny Defendants’ motion
 18 to dismiss in its entirety.

19 Date: July 28, 2025

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION OF NORTHERN CALIFORNIA

/s/ *Emilou MacLean*
Emilou MacLean